IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 430 of 1989

in

SPECIAL CIVIL APPLICATIONNo 659 of 1987

with

LETTERS PATENT APPEAL No 431 of 1989

in
SPECIAL CIVIL APPLICATION NO.5487 OF 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JATUNBIBI,W/O GULAM MAHIYODIN SHEIKH
Versus
STATE OF GUJARAT

Appearance:
1. LETTERS PATENT APPEAL No. 430 of 1989
MR DARSHAN M PARIKH for Appellants
MR KG SHETH, AGP for Respondent No. 1
MR MC SHAH for Respondent No. 2

2. LETTERS PATENT APPEALNo 431 of 1989

MR DARSHAN M PARIKH for Appellants
MR KG SHETH, AGP for Respondent No. 1
MR MC SHAH for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE
Date of decision: 27/09/1999

ORAL JUDGEMENT (Per Dave, J.)

1. These two Letters Patent Appeals arise out decision rendered by a learned Single Judge in Special Civil Applications No.659 of 1987 and 5487 of 1986, on 22nd November, 1988.

2. The facts of the case leading to these Letters Patent Appeals may be stated. The appellants in Letters Patent Appeal No.430 of 1989 are the heirs of deceased-Chandminya Musaminya Shaikh, the deceased and appellant in Letters Patent Appeal No.431 of 1989, Babubhai Lallubhai Patel, were formerly working in Navsari Borough Municipality. Both of them retired from service on 7th May, 1966 and 5th September, 1965, respectively. Around that time, a pension scheme was under consideration and was subsequently sanctioned by the Government on 17th March, 1967, in respect of employees of the said Municipality. The said scheme was made applicable from 28th May, 1966. Resultantly, these two employees, who had retired prior to 28th May, 1966, were not given the benefit of the pension scheme. They, therefore, made separate representation to the Municipality for giving them the benefit of pension in terms of the scheme. Those representations came to be rejected by the Municipality by resolutions No.45 and 46 passed on 24th June, 1968. The employees, therefore, made representations to the Government and the Government, ultimately, turned down their requests/representations in the year 1976 stating that they were not entitled to pension as the scheme was made applicable from 28th May, 1966. The employees had, in the meantime, preferred an application under Section 33-C(2) of the Industrial Disputes Act in the year 1974, which was ultimately dismissed in January 1984. Thereafter, the present petitions came to be preferred, one in 1986 and the other in 1987. These factual aspects are not disputed by the parties.

3. The petitions came to be rejected by the learned Single Judge on the ground of delay and laches in preferring the petitions and asserting the right. The

learned Single Judge observed that it was not necessary to enter into the merits of the claim of the appellants and to decide whether or not they are entitled to claim pension under the said pension rules or pension scheme since the petitions deserve to be rejected on the ground of gross delay. It was also observed that the claim of the appellants for the pension was rejected in 1969 and in 1976 by the Government and, therefore, the petitions were belatedly filed after ten years of rejection of claim. The learned Single Judge further held that the appellants' claim was rejected latest on May 20, 1976 and, therefore, undisputedly, the appellants could not have approached the Civil Court by way of suits to seek relief of declaration and arrears of pension as the suits would be barred by limitation. The learned Single Judge also observed that the appellants have approached the Court many years after the date for which, according to them, they are entitled to pension, but had not taken any steps in any court for the recovery of the alleged pension even after their claim was rejected by the respondent till filing of the petitions and, therefore, there is gross delay in filing petitions. In view of these contentions, the petitions came to be rejected.

4. Mr. Parikh, learned advocate for the appellants has restricted his arguments on question of delay as he was not called upon to argue on merits as that is the only ground on which petitions are rejected. He submitted that the appellants have properly explained the delay in preferring the petitions and the only flaw, if at all it can be called, is, that the appellants have not given the dates in the petition during which the appellants were pursuing a legal remedy under bona fide belief before another forum. He pressed into service provisions of Section 14 of the Limitation Act and submitted that principles analogous to the said section may be applied while considering the question of delay in preferring the petitions. Placing reliance on the principles laid down in the following decisions of the Supreme Court in (1) Globe Transport Corporation v. Triveni Engineering Works, (1983) 4 SCC 707; (2) Sunder Das & Ors. v. Gajananrao & Ors, (1997) 9 SCC 701; (3)Mafatlal Industries Limited & Ors. v. Union of India & Ors., (1997) 5 SCC 536; (4) Ghasi Ram & Ors. v. Chait Ram Saini & Ors., (1998) 6 SCC 200; (5)ITC Ltd., Monghyr V/s. Collector of Central Excise, Patna, (1999) 11 SCC 660; and (6) N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123, Mr. Parikh submitted that, the learned Judge has committed an error in rejecting the petitions on ground of delay. It was pleaded that the question whether delay is sufficiently explained or not should be

viewed liberally and should be construed in a manner not to deny the right of a person as the right of a party never dies. He submitted that the appellants/employees were continuously pursuing their remedies, may be before inappropriate forum, but that cannot lend to them a label of being negligent in claiming their right. Under the circumstances, it was contended that the petitions ought not to have been rejected by the learned Single Judge on the ground of delay in filing petitions. He further urged that the petitions have not been decided by the learned Single Judge on question of merits and on merits, the petitioners have a sound case.

5. Mr. M.C. Shah, learned counsel appearing for respondent-Municipality, submitted there there was total inaction on part of the employees/appellants from 1968 to 1986 and as no explanation is tendered as to what was done during this period by them, the learned Single Judge was justified in rejecting the petitions. He submitted that, even if the explanation tried to be given about litigating before a Court under bona fide belief is accepted, then also, there is no explanation for a period from 1968 to 1974 and from 1984 to 1986 and, therefore, appeal should be dismissed. He submitted that according to the law as settled by the Honourable Apex Court in Amrit Lal v. Collector, Central Excise and Customs, Revenue, 1975 SC 538, representations and memorials would not extend the period of limitation and it cannot be considered as a proper explanation for the delay at all. Another fold of his argument was that the relief that is sought by the employees could not have been granted by the Court unless the rules are amended and made applicable from 1.1.1965 and as no relief is sought seeking a mandamus against the Government to apply the rules from 1.1.1965, the order of the learned Single Judge should be upheld. He submitted that no diligence was shown by the appellants in pursuing the recovery application under Section 33-C(2) of the Industrial Disputes Act because in reply to that application, a specific contention was raised that, that forum had no jurisdiction and despite that, no action was taken by the employees to examine that question and assert the right before appropriate forum.

6. Mr. K.G. Sheth, learned Assistant Government Pleader appearing for the State, submitted, while adopting the arguments advanced by the learned counsel Mr. Shah, that there is no legal right which could be asserted by the appellants and, therefore, the appeals shall be dismissed.

7. Considering contentions raised by rival sides and

the decision rendered by the learned Single Judge, the main question that this Court is required to address is whether the employees' claim was grossly delayed and liable to be rejected as being a stale claim. In this regard, certain dates are important, which need to be mentioned :

(1) 14th December, 1957 - Resolution was passed by Navsari Municipality to adopt the pension scheme.

(2) 5th September, 1958 - Resolution was passed by Navsari Municipality for preparing final scheme with certain amendments.

(3) 13th March 1967 - Scheme was sanctioned by the Government and made effective retrospectively with effect from 28th May, 1966.

(4) 5th September, 1965 - Appellant in Letters Patent Appeal No.431 of 1989 retired from service.

(5) 7th May, 1966 - Deceased Chandminya Musaminya, petitioner in Special Civil Application No.659 of 1987 retired from service.

(7) 24th June, 1968 - Resolutions were passed by the Municipality to the effect that benefit of the pension scheme cannot be made available to the original petitioners.

(8) 1976 - Decision was taken by the Government rejecting the representation of the employees to apply the pension scheme to them.

(9) 10th January 1984 - Application under Section 33-C(2) of the Industrial Disputes Act was dismissed by the Labour Court at Navsari.

(10) September 1986 - Special Civil Application No.5487 of 1986 was preferred by Mr. B.L. Patel.

(11) 1.12.1986 - Special Civil Application No.659 of 1987 was preferred by deceased Chandminya.

8. With these dates in the backdrop, the submissions advanced will have to be considered in the light of explanation offered by original petitioners for delay in filing the petitions. The only explanation offered is as under :-

"6. The petitioner times without number, approached the respondent-Municipality and other concerned authority, but in vain. The petitioner also filed a Recovery Application under Section 33C(2) of the Industrial Disputes Act, 1947, but the same came to be dismissed, as the said Court had no jurisdiction. The petitioner tried his best to persuade the respondent-Municipality to consider his case, but the respondent-Municipality has paid not attention to the requests of the petitioner and hence the petitioner has no alternative but to file this petition to get redressal for wrong done to him."

9. It is, therefore, very clear that the original petitioners have not explained the lack of action on their part from 1968 to 1974, admittedly, when they preferred the Recovery Application. Likewise, there is no explanation for the delay between 1984, when the recovery applications came to be dismissed by the Labour Court and 1986, when the petitions came to preferred. May be, the dates may not have been stated in the petition, but, in our view, some explanation for this period ought to have come from the original petitioners. There is nothing to indicate that any action was taken by the petitioners to assert their right during this period. Even for the period between 1974 and 1984, during which the Recovery Application was pending, there appears to be no diligence on part of the original petitioners when they were faced with a contention about want of jurisdiction of the Labour Court in the reply filed by the opponents and no action appears to have been taken by them after filing of the reply, as rightly contended by Mr. Shah. It is, therefore, not possible to accept the appellants' say that they were in good faith pursuing their claim before another Court. Their inaction after raising of contention about jurisdiction cannot be considered as pursuit of right in good faith and would not fall within the definition of good faith if definition of good faith as given in Section 2(h) of the Limitation Act is considered which runs thus :

"Nothing shall be deemed to be done in good faith which is not done with due care and caution even if it is accepted principles stated in Section 14 of the Limitation Act are applicable to the facts of the present case."

10. The decisions on which reliance is placed by the

appellants indicate that in cases where a litigant is litigating before an inappropriate forum under bona fide belief he will be entitled to exclusion of that period from the period of limitation when approaches the appropriate forum. The decision in N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123 relates to Section 5 of the Limitation Act wherein a principle is laid down that in such situations, the Court has to adopt a liberal approach and interpretation. The argument of Mr. Parikh that on principles analogous to the principles laid down in these decisions under Section 14 of the Limitation Act the petitions ought to have been entertained on merits cannot be accepted.

11. It is a settled proposition of law that the powers of an High Court to issue an appropriate writ under Article 226 of the Constitution are discretionary and the relief under this Article cannot be claimed as of right. A right asserted with the help of Article 226 can be upheld provided it is asserted within reasonable time. Courts do not encourage agitation of stale claims and exhume matters which have already been disposed of. The Courts can help only when there is reasonable explanation of delay. In the instant case, as noted earlier, there is no explanation coming forward from the original petitioners for the delay in asserting their rights, at least between 1968 and 1974, and 1984 and 1986. Inordinate delay in making a motion for a writ would weaken the case for grant and exercise of the discretion by the Court. In appropriate case, the High Court may not exercise its discretion and may refuse to grant relief if there is such negligence or omission on part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances cause prejudice to the party, viz. the Municipality.

12. To consider the question whether the delay is gross, inordinate or unreasonable, the observation of the Honourable Supreme Court in State of M.P. v. Bhailal, A.I.R. 1964 SC 1006 may profitably be quoted.

> "This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for remedy but where the delay is more than this period, it will almost always be proper for the court to hold it is unreasonable."

13. In Salonah Tea Co. v. Superintendent of Taxes, Nowgong, A.I.R. 1990 SC 772, it is observed that

generally a writ petition under Article 226 of the Constitution should be filed in the High Court within a period of 90 days which is a period fixed for appeals to High Court.

15. A point was emphatically made on behalf of the appellants that the original petitioners were pursuing their remedy by making representations/applications to the Government after their claim was rejected by the Municipality. Making of representations cannot be considered as a reasonable explanation for ignoring the delay that is caused in asserting the right. In the case of Amrit Lal v. Collector, Central Excise and Customs, A.I.R. 1975 SC 538, it has been held that by mere filing of repeated representations a petitioner cannot get over the obstacles which delay in approaching the Court creates.

16. In this view of legal position, the period of unexplained inaction and delay between 1968 and 1974 and 1984 and 1986/1987 has to be taken as unreasonable. The rejection of petition is, therefore, in our view, just and proper.

17. In view of the above discussion, this Court is of the view that the petitions have been rightly rejected on ground of delay. In our view, since the delay is so gross, it is not necessary to consider the merits of the case as has rightly been done by the learned Single Judge.

19. In view of the above discussion, this Court is of the view that no error can be said to have been committed by the learned Single Judge in rejecting the petitions on the ground of inordinate delay and, therefore, the appeals also must fail. The appeals are, therefore, dismissed. No order as to costs.

[J.M. PANCHAL, J.]

[A.L. DAVE, J.]

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